

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

2007 MAY 16 AM 10:38

CLARENCE J. TORRES
CLERK U.S. DIST. CT.
S.D. OF FL. - MIAMI

U.S. Commodity Futures Trading Commission,

Plaintiff,

v.

The Liberty Mutual Group, Inc., Addison
Financial Group, Inc., Addison Management
Group, Inc., Hamlin Mercer Group, Inc.,
Colfax Management Group, Inc., Alan Lerner,
Forefront Investments Limited Partnership,
Todd Guthrie, and Benji Dayan,

Defendants.

CIVIL ACTION NO: _____

COMPLAINT FOR
INJUNCTIVE AND OTHER
EQUITABLE RELIEF AND
FOR PENALTIES UNDER
THE COMMODITY
EXCHANGE ACT

07-21267
CIV-LENARD
/ TORRES

I. SUMMARY

1. From at least February 2005 through at least June 2006 ("relevant time period"), The Liberty Mutual Group, Inc. ("LMG"), Addison Financial Group, Inc. ("Addison Financial"), Addison Management Group, Inc. ("Addison Management") (collectively, "AMG"), Hamlin Mercer Group, Inc. ("Hamlin Mercer"), and Colfax Management Group, Inc. ("Colfax") (collectively, "HMG"), acting as a common enterprise (the "Addison Enterprise"), under the direction and control of Alan Lerner ("Lerner"), fraudulently solicited retail customers to open accounts to engage in illegal off-exchange foreign currency options transactions with Forefront Investments Limited Partnership, Inc. ("FILP"). FILP, under the direction and control of Todd Guthrie ("Guthrie") and Benji Dayan ("Dayan"), accepted funds from customers introduced by the Addison Enterprise, for the purpose of acting as the counterparty to the illegal off-exchange foreign currency options transactions while falsely holding itself out as being registered with the Commodity Futures Trading Commission ("Commission").

2. The fraudulent solicitations made by Addison Enterprise employees, under the direction and control of Lerner, involved claims (1) conveying that customers were likely to realize large profits trading foreign currency options, and (2) minimizing the risk of loss involved in trading foreign currency options, while (3) failing to disclose the Addison Enterprise's dismal performance record trading foreign currency options on behalf of customers. As a result of the fraudulent solicitations, Addison Enterprise customers invested and lost approximately \$7,014,444.13 during the relevant time period. During this same period, the Addison Enterprise generated commissions totaling approximately \$3,329,524.50.

3. By virtue of his conduct, Lerner has engaged, is engaging, or is about to engage in acts and practices that violate Section 4c(b) of the Commodity Exchange Act ("Act"), 7 U.S.C. § 6c(b) (2002), and Commission Regulations 1.1(b)(1) and (3), and 32.9(a) and (c) thereunder, 17 C.F.R. §§ 1.1(b)(1) and (3), and 32.9(a) and (c) (2006). The Addison Enterprise entities are liable for such violations pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2006). FILP is liable for the Addison Enterprise's violations pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2006). Further, FILP and Addison Enterprise violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Commission Regulation 32.11(a), 17 C.F.R. § 32.11(a) (2006) by soliciting and accepting orders for commodity options not authorized by the Act or Commission Regulations. Lerner, Guthrie and Dayan are liable for such violations pursuant to Section 13(b) of the Act. Finally, FILP violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Commission Regulations 1.1(b)(1) and (3), and

32.9(a) and (c) thereunder, 17 C.F.R. §§ 1.1(b)(1) and (3), and 32.9(a) and (c) (2006), by falsely representing that it was a Commission registrant in connection with the purchase or sale of illegal off-exchange foreign currency options contracts. Guthrie and Dayan are liable for such violation pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002).

4. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), the Commission brings this action to enjoin the Defendants from soliciting new customers and customer funds and any other unlawful acts and practices related to the trading of commodity interest contracts, and to compel their compliance with the Act. In addition, the Commission seeks from each of the Defendants an accounting, disgorgement of Defendants' ill-gotten gains, restitution to investors, civil monetary penalties, and such other relief as this Court may deem necessary or appropriate.

5. Unless enjoined by this Court, Defendants are likely to continue to engage in the acts and practices alleged in this Complaint, as more fully described below.

II. JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

7. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2002), in that Defendants transacted business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district, among other places.

III. THE PARTIES

A. THE PLAINTIFF

8. **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged with the responsibility for administering and enforcing the provisions of the Act, as amended, 7 U.S.C. §§ 1 *et seq.*, and the regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.*

B. THE DEFENDANTS

9. **The Liberty Mutual Group, Inc.** was incorporated in Florida on November 19, 2004. LMG's registered business address was listed as 237 Mansfield F, Boca Raton, Florida. Lerner was listed with the Florida State Division of Corporations as the president of LMG. On February 9, 2005, LMG changed its registered business address to 1900 NW Corporate Boulevard, Suite 400, Boca Raton, Florida. From February 2005 through June 2005, LMG solicited customers to engage in off-exchange options transactions with FILP. LMG has never been registered with the Commission. On August 12, 2005, LMG was voluntarily dissolved as a corporation.

10. **Addison Financial Group, Inc.** was incorporated in Florida on July 5, 2005. Addison Financial's registered business address was listed as 433 Plaza Real, Suite 275, Boca Raton, Florida. Lerner was listed with the Florida State Division of Corporations as the president of Addison Financial. This is the same Lerner who was president of LMG. From June 2005 through approximately March 2006, Addison Financial solicited customers to engage in off-exchange options transactions with FILP. Addison Financial has never been registered with the Commission. On March 24, 2005, Addison Financial was voluntarily dissolved as a corporation.

11. **Addison Management Group, Inc.** was incorporated in Florida on November 19, 2004. Addison Management functioned as the management firm for LMG and Addison Financial by handling the accounting aspects of each business. Addison Management's registered business address was listed as 237 Mansfield F, Boca Raton, Florida. Lerner was listed with the Florida State Division of Corporations as the president of Addison Management. This is the same Lerner who was president of LMG and Addison Financial. Addison Management has never been registered with the Commission. On April 3, 2005, Addison Management was voluntarily dissolved as a corporation.

12. **Hamlin Mercer Group, Inc.** was incorporated in Florida on November 15, 2005. The registered business address of Hamlin Mercer was listed as 433 Plaza Real, Suite 275, Boca Raton, Florida. Lerner was listed with the Florida State Division of Corporations as the president of Hamlin Mercer. This is the same Lerner who was president of LMG, Addison Financial, and Addison Management. From approximately January 2006 through at least June 2006, Hamlin Mercer solicited customers to engage in off-exchange options transactions with FILP. Hamlin Mercer has never been registered with the Commission. On June 16, 2006, Hamlin Mercer was voluntarily dissolved as a corporation.

13. **Colfax Management Group, Inc.** was incorporated in Florida on November 15, 2005. According to Lerner, Colfax functioned as the management firm for Hamlin Mercer by handling the accounting aspects of the business. The registered business address of Colfax was listed as 433 Plaza Real, Suite 275, Boca Raton, Florida. Lerner was listed with the Florida State Division of Corporations as the president of

Colfax. This is the same Lerner who was president of LMG, Addison Financial, Addison Management, and Hamlin Mercer. Colfax has never been registered with the Commission. On June 16, 2006, Colfax was voluntarily dissolved as a corporation.

14. **Alan Lerner**, age 61, resides at 5517 Pacific Boulevard, Apt. 4414, Boca Raton, Florida. Lerner is listed with the Florida State Division of Corporations as the President of each firm comprising the Addison Enterprise. Lerner has never been registered with the Commission in any capacity.

15. **Forefront Investments Limited Partnership** was incorporated in Florida on January 18, 2005. FILP's registered business address is listed as 2999 NE 191st Street, Suite 804, Aventura, Florida. From January 18, 2005 through June 28, 2005, Benji Dayan was listed with the Florida State Division of Corporations as the general partner of FILP. Since June 29, 2005, FFLP Holdings Inc. ("FFLP"), a holding firm owned by Guthrie, has been listed as the general partner of FILP. Guthrie is listed with the Florida State Division of Corporations as the president of FFLP. During the relevant time period, either Guthrie and/or Dayan controlled the day-to-day operations of FILP. From February 7, 2005 through April 14, 2006, FILP entered into successive introducing agreements with LMG, AMG, and HMG for the purpose of acting as the counterparty to the off-exchange foreign currency options transactions solicited by LMG. FILP has never been registered with the Commission in any capacity, nor has it ever been a material affiliate of a registrant.

16. **Todd Guthrie**, age 35, resides at 13611 Southwest 102 Terrace, Miami, Florida. Since at least January 25, 2005, Guthrie has been the Chief Financial Officer of FILP. Since at least June 29, 2005, Guthrie has also been listed with the Florida State

Division of Corporations as the president of FFLP, the general partner of FILP. Guthrie has never been registered in any capacity with the Commission.

17. **Benji Dayan**, age 35, resides at 3214 SW 53rd Ct, Ft. Lauderdale, Florida. From January 18, 2005 through June 28, 2005, Dayan was listed with the Florida State Division of Corporations as the general partner of FILP. Dayan is not currently registered with the Commission in any capacity. He was registered from 1993 to 2005 as an Associated Person (“AP”) and/or listed as a Principal of various registrants, including, Universal Commodity Corporation, Commonwealth Financial Group, Inc., Qualified Leverage Providers, Inc., FX Options 1, Inc., and Forefront Investments Corporation. In 1998, Dayan was named as a respondent in one National Futures Association (“NFA”) action for sales practice violations and was required to tape all conversations with customers for a period of three years. Dayan has also been named as a defendant in *Commodity Futures Trading Commission v. E-Metal Merchants, Inc.*, Case No. 05-21571 (S.D. Fla. June 13, 2005), which is currently pending.

IV. FACTS

A. ADDISON ENTERPRISE’S FRAUDULENT BUSINESS OPERATIONS

The Common Enterprise

18. During the relevant time period, the Addison Enterprise operated through a complex web of interrelated firms, including LMG, AMG, and HMG. The Addison Enterprise, successively through each of these firms, fraudulently solicited customers to engage in off-exchange foreign currency options transactions with FILP as the counterparty.

19. For example, at all times during the relevant time period, the Addison Enterprise operated under the direction and control of Lerner, who was the president of each firm comprising the Addison Enterprise.

20. Further, the firms' business operations were the same and they each utilized nearly identical sales materials, including account opening documents and news articles and charts concerning foreign currency. Each firm also entered into an identical introducing agreement with FILP. Moreover, customer account statements were in the identical format and some customer accounts continued to trade even when the names of the firms changed.

21. Moreover, the various Addison Enterprise firms also shared many of the same employees. Some of the firms comprising the Addison Enterprise also shared the same physical business address, the same principal business address as recorded with the Florida State Department of Corporations, as well as the same mailing address.

22. During the relevant time period, the Addison Enterprise account executives typically used high pressure sales tactics to convince customers or potential customers to invest in off-exchange foreign currency options transactions with FILP. According to customers, account executives would pressure customers into investing by making representations such as the following or words to this effect:

- “[T]hings are happening--fast and furious—Now and you need to get at least \$20,000 in your account right away!” The same account executive also represented to the customer that if he sent \$20,000 to \$25,000 right away, the customer would see his account back in profits very quickly;

- Another account executive sent account information via fax and rushed the customer through the application process, explaining that he wanted to catch the rise in the Euro; and
- Another account executive represented to a customer that the Swiss Franc would be a good investment because the U.S. was clamping down on Middle Eastern countries. The account representative further indicated that the customer only had a small window of opportunity and that the payoff would be very quick, probably within 10 days to 2 weeks.

23. At all times during the relevant time period, Lerner was the president of each company comprising the Addison Enterprise and exercised control over the day-to-day activities of the firms. Lerner controlled the bank accounts of the Addison Enterprise. Lerner signed, as president, each of the introducing agreements that the Addison Enterprise entered into with FILP. Lerner was responsible for paying the employees and other bills of the firm. Lerner led training sessions for account executives two to three times a week. Lerner was responsible for placing the trades of customers. Lerner received weekly equity-runs for customers. Lerner also acted as the custodian of records for the Addison Enterprise. Lerner had the authority to hire and/or fire employees. The employee responsible for supervising the account executives reported to Lerner on a daily basis as to how the account executives were doing. Lerner was the controlling person of the Addison Enterprise.

The Addison Enterprise's Relationship with FILP

24. During the relevant time period, FILP entered into introducing agreements with each of the firms comprising the Addison Enterprise.

25. Each of the introducing agreements between FILP and the Addison Enterprise were identical in content.

26. Lerner signed each of the introducing agreements on behalf of the Addison Enterprise.

27. Dayan and/or Guthrie signed the introducing agreements on behalf of FILP.

28. From at least February 2005 through February 2006, the Addison Enterprise introduced customers exclusively to FILP. The various entities that comprised the Addison Enterprise, as well as their employees, acted as agents to FILP.

29. As part of the Addison Enterprise/FILP business arrangement, FILP provided the Addison Enterprise with its account opening documents.

30. Notably, FILP provided the Addison Enterprise with promotional materials, including charts and news articles concerning foreign currency to be provided to potential customers. FILP provided such materials to the Addison Enterprise to assist it in soliciting more business for FILP.

31. Moreover, on a daily basis, FILP provided the Addison Enterprise with trade recommendations, including the bid and ask prices of specific foreign currency options contracts. Addison Enterprise employees would provide to customers these trade recommendations. The trade recommendations made by FILP were frequently out-of-the-money, and deep-out-of-the-money options. FILP provided such trade

recommendations to the Addison Enterprise to assist it in generating more business for FILP.

32. The Addison Enterprise charged customers \$240 per round-turn for each option transaction and \$380 for each spread transaction. These commissions were collected by FILP.

33. FILP deducted a “clearing fee” from the commissions owed to the Addison Enterprise. The clearing fees were held by FILP as a “legal fund” on behalf of the Addison Enterprise. Specifically, these funds were set aside by FILP to be used to settle any disputes Addison Enterprise customers had concerning their trading accounts.

34. Larry Freedberg (“Freedberg”) was hired by FILP to be the customer service representative for FILP. Freedberg was also listed as an employee of AMG on AMG internal business documents. Freedberg negotiated settlement agreements between AMG customers and AMG and FILP. Freedberg signed these agreements on behalf of AMG and FILP.

35. During the relevant time period, Joseph Prager (“Prager”), an employee of Addison Management and Hamlin Mercer in 2005 and early 2006, also received a payment in the amount of \$6,431.64 from FILP in September 2005. In 2005 and 2006, Prager was also a contract employee for F8 Real Estate Management, Inc. (“F8 Real Estate”), which was a firm engaged by Guthrie to provide back-office services and act as a paymaster for firms owned by Guthrie, including, but not limited to FILP. Between November 2005 and June 2006, Prager was paid approximately \$61,375 by F8 Real Estate Management.

Fraudulent Solicitation of Investors

36. Customers of the Addison Enterprise rarely ever made profits and were exposed to significant risk of loss. In fact, during the relevant time period, the Addison Enterprise customers lost at least \$7,014,444.13 out of approximately \$7,611,306.46 in deposited funds. During this same period, Addison Enterprise generated commissions totaling approximately \$3,329,524.50.

37. During the relevant time period, Addison Enterprise employees, who were under the control of Lerner, routinely made misleading statements to prospective customers regarding the likelihood of making large profits, including, but not limited to, the following or words to this effect:

- that small moves in the price of the Euro would make it easy enough to double or triple accounts in six to nine months;
- that the customer could realize a profit in thirty (30) days and a 200% return in ninety (90) days;
- that a few cents move in the currency would generate large profits;
- that if the customer invested with the account executive, the account executive “could assure possible high profits.” This account executive also asked the customer to “Promise me that when I make you a millionaire you will come and visit me;”
- that the account executive made several clients wealthy and that the account executive would make the customer a lot of money too;
- that the account executive was making “so much” money and the people he made trades for were making “so much” money. The

account executive laughed about how the customer would come to Florida and buy him dinner and drinks after he made all of this money for the customer; and

- that other customers were successful and making lots of money.

Given these statements of profit potential, a reasonable investor would have found it material to learn that a vast majority of Addison Enterprise customers closed their accounts at a loss.

38. During the relevant time period, Addison Enterprise employees, who were under the control of Lerner, routinely made misleading statements to prospective customers regarding the risk of loss associated with trading foreign currency options, including, but not limited to, the following or words to this effect:

- that the customer should not worry because the account executives were experts and they used a strategy of splitting transactions that spread the risk. This customer lost \$85,310 of his \$86,000 investment;
- that although there was risk, as long as the customer followed the account executive's advice, he would manage the investment and make money for the customer. This account executive also claimed to have field representatives all across the globe, monitoring the local climate and giving up-to-the-second advice on investing. This customer lost approximately \$108,500 of his \$116,000 investment;
- that the customer should buy contracts for both the upside and the downside because the upside contracts would make a lot of money while the downside would cover the investment if the currency price

went down. This customer lost \$141,960 of his approximately \$143,700 investment; and

- that if the customer worked with the account executive, there would be low risk to the customer's capital, with losses, if any, being small.

Another account executive represented to this customer that "I promise I won't let this trade hurt you. If it starts to go against us, I will get you out...." This customer lost \$194,895 of his \$194,900 investment.

Given these statements that misleadingly minimized the risk of loss, a reasonable investor would have found it material to learn that a vast majority of Addison Enterprise customers closed their accounts at a loss.

39. In addition to such statements, Addison Enterprise employees provided actual and prospective customers with misleading profit illustrations that made it seem that profits were likely in that they represented that there was a direct correlation between an increase in the value of a foreign currency and the resulting profit to the holder of a call option for that currency. These profit illustrations were memorialized in scripts provided to Addison Enterprise employees. Lerner was aware of these scripts and that they were provided to Addison Enterprise employees. One of the aforementioned scripts provides a hypothetical example of what is described as a "tremendous profit making opportunity." The example represents that one contract would leverage \$150,000 and that each penny move equals \$1,500 in profit. The example further suggests that the customer could realize a gross profit of \$150,000 if they purchased 10 contracts based on a projected 10 cent increase in the value of the foreign currency. Immediately following

this profit example, the script reads “ Tell me _____, is that the type of money you’re looking to make and if we’re only half right, I don’t think you will be too unhappy, do you agree?” These representations together convey the message that a prospective customer could expect to make a significant profit based upon small upward movements in the value of a foreign currency. Given these statements of profit potential, a reasonable investor would have found it material to learn that a vast majority of Addison Enterprise customers closed their accounts at a loss.

40. Lerner knew that Addison Enterprise employees were making statements that over-emphasized profit potential or minimized risk of loss. Lerner also knew that most Addison Enterprise customers closed their accounts at a loss, and many at a substantial loss. Despite such knowledge, Lerner did not direct Addison Enterprise employees to disclose to actual and prospective customers the losses sustained by Addison Enterprise customers. As a result, Addison Enterprise account executives did not disclose to actual and prospective customers the losses sustained by Addison Enterprise customers while making statements that overemphasized profit potential or minimized risk of loss.

B. ILLEGAL OFF-EXCHANGE FOREIGN CURRENCY OPTIONS TRANSACTIONS

Most, if not all, of the Addison Enterprise Customers were not Eligible Contract Participants

41. Most, if not all, of the Addison Enterprise customers possessed assets of less than \$5,000,000 . Most, if not all, of the customers entered into the options transactions for the purpose of speculating in price movements. Consequently, Addison Enterprise customers were not eligible contract participants. *See* 7 U.S.C. §1a(12) (2002).

Addison Enterprise and FILP Solicited and Accepted Orders and Funds to Trade Illegal Off-exchange Foreign Currency Options

42. During the relevant time period, the Addison Enterprise, through its employees and under the control of Lerner, solicited customers to engage in illegal off-exchange foreign currency options transactions with FILP.

43. FILP accepted funds from the Addison Enterprise customers for the purpose of trading illegal off-exchange foreign currency options transactions. FILP deposited these customer funds into segregated accounts maintained and controlled by FILP.

44. FILP has never been registered with the Commission in any capacity nor is it an affiliated person of a FCM registered under the Act that is required to make or keep records under Section 4f(c)(2)(B) of the Act, 7 U.S.C. § 6f(c)(2)(B) (2002).

45. During the relevant time period, FILP claimed to be affiliated with two registered FCMs, Forefront Investments Corporation, Inc. ("FIC") and FX Options 1, Inc. ("FXO"). During the relevant time period, neither FIC nor FXO held customer funds of \$6,250,000 or more, or had adjusted net capital of \$5,000,000 or more. Thus, neither FIC

nor FXO was required to keep records related to the financial activities of FILP, and FILP was not a proper counterparty enumerated in Section 2(c)(2)(B)(ii) of the Act. *See* 7 U.S.C. § 6f(c)(2)(B) (2002), and 17 C.F.R. § 1.14(d) (2006).

46. Because FILP was neither a registered FCM nor an affiliated person of a FCM registered under the Act which is required to make or keep records under Section 4f(c)(2)(B) of the Act, and Addison Enterprise customers were not eligible contract participants, the entire Act applies to FILP transactions. *See* 7 U.S.C. § 2(c)(2)(B) (2002).

47. Pursuant to the Act and the Commission regulations, the FILP transactions were illegal option transactions. *See* 7 U.S.C. § 6c(b) (2002), and 17 C.F.R. § 32.11(a) (2006).

C. GUTHRIE AND DAYAN WERE CONTROLLING PERSONS OF FILP

48. Guthrie and Dayan were the controlling persons of FILP. From approximately January 18, 2005 through June 28, 2005, Dayan was listed as the general partner of FILP. Since June 29, 2005, Guthrie has been listed as the general partner of FILP. Guthrie, as Chief Financial Officer, and Dayan, as President, controlled the bank account into which FILP deposited the Addison Enterprise's customer funds. During the relevant time period, Guthrie and/or Dayan signed checks on behalf of FILP. Dayan and Guthrie were responsible for hiring employees of FILP. Guthrie and/or Dayan were responsible for supervising employees of FILP. Dayan and Guthrie, on behalf of FILP, signed the introducing agreements entered into by Addison Enterprise.

V. **VIOLATIONS OF THE COMMODITY EXCHANGE ACT
AND COMMISSION REGULATIONS**

COUNT I:

**Violations of Section 4c(b) of the Act and
Commission Regulations 1.1(b)(1) and (3) and 32.9(a) and (c):
Options Fraud**

49. Paragraphs 1 through 48 are re-alleged and incorporated herein.

50. Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), makes it unlawful to offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under the Act which is of the character of, or is commonly known to the trade as, an “option,” “privilege,” “indemnity,” “bid,” “offer,” “put,” “call,” “advance guaranty,” or “decline guaranty,” contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe.

51. Commission Regulation 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3) (2006), makes it unlawful for any person, directly or indirectly (1) to cheat or defraud or attempt to cheat or defraud any person; or (3) willfully to deceive any other person by any means whatsoever, in or in connection with transactions in foreign currency.

52. Commission Regulation 32.9(a) and (c), 17 C.F.R. § 32.9(a) and (c) (2006), makes it unlawful for any person, directly or indirectly (a) to cheat or defraud or attempt to cheat or defraud any person; or (c) to deceive any other person by any means whatsoever, in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, any commodity option transaction.

53. Lerner, by and through Addison Enterprise employees, in connection with offers to enter into, the entry of, the confirmation of the execution of foreign currency options transactions, cheated or defrauded or attempted to cheat or defraud customers, and deceived or attempted to deceive customers, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Commission Regulations 1.1(b)(1) and (3), and 32.9(a) and (c), 17 C.F.R. §§ 1.1(b)(1) and (3), and 32.9(a) and (c) (2006).

54. Lerner was acting as an agent of or acting for the Addison Enterprise entities when he cheated or defrauded or attempted to cheat or defraud customers, and deceived or attempted to deceive customers and, therefore, the Addison Enterprise entities are liable for his violations of the Act and Commission Regulations pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2006).

55. Addison Enterprise was acting as the agent of or acting for FILP when it fraudulently solicited customers, and therefore FILP is liable for Addison Enterprise's violations of the Act and Commission Regulations pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2006).

56. Guthrie and Dayan directly or indirectly controlled FILP and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting FILP's violations alleged in the Complaint. Guthrie and Dayan are therefore liable as controlling persons for each of FILP's violations of the Act pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002).

57. Each material misrepresentation or omission made during the relevant time period, including, but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002) and Commission Regulations 1.1(b)(1) and (3), and 32.9(a) and (c), 17 C.F.R. §§ 1.1(b)(1) and (3), and 32.9(a) and (c) (2006).

COUNT II:

**Violations of Section 4c(b) of the Act and Commission Regulation 32.11(a):
Illegal Options**

58. Paragraphs 1 through 48 are re-alleged and incorporated herein.

59. Section 2(c)(2)(B) of the Act, 7 U.S.C. § 2(c)(2)(B) (2002) provides that the entire Act shall apply over options contracts on foreign currency that are “offered to, or entered into with, a person that is not an eligible contract participant,” so long as the counterparty to the option, or the person offering to be the counterparty, is not one of the proper counterparties enumerated in Section 2(c)(2)(B)(ii) of the Act, 7 U.S.C. § 2(c)(2)(B)(ii) (2002).

60. FILP was not a proper counterparty for retail foreign currency transactions.

61. Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1a(12)(A)(xi) (2002), defines an eligible contract participant as an individual who has total assets in excess of: (a) \$10 million; or (b) \$5 million and who enters the transaction to manage the risk associated with an asset he owns. Most, if not, all of the customers solicited by the Addison Enterprise were not eligible contract participants.

62. Commission Regulation 32.11(a), 17 C.F.R. § 32.11(a) (2006), makes it unlawful for any person to solicit or accept orders for, or to accept money, securities or

property in connection with, the purchase or sale of any commodity option, or to supervise any person or persons so engaged, unless such transaction is conducted on or subject to the rules of a contract market or foreign board of trade.

63. During the relevant time period, defendants Addison Enterprise and FILP, by and through their employees, solicited and/or accepted orders for the purchase and sale of foreign currency options contracts that were not conducted on or subject to the rules of a contract market or foreign board of trade, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Commission Regulation 32.11(a), 17 C.F.R. § 32.11(a) (2006).

64. Lerner directly or indirectly controlled the Addison Enterprise, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the Addison Enterprise's violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Commission Regulation 32.11(a), 17 C.F.R. § 32.11(a) (2006). Lerner therefore is liable for these violations as a controlling person pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002).

65. Guthrie and Dayan directly or indirectly controlled FILP, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting FILP's violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Commission Regulation 32.11(a), 17 C.F.R. § 32.11(a) (2006). Guthrie and Dayan are therefore liable as controlling persons for each of FILP's violations of the Act pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002).

66. Each solicitation, acceptance of an order, or acceptance of money for the option contracts offered by FILP that occurred during the relevant time period is alleged

as a separate and distinct violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Commission Regulation 32.11(a), 17 C.F.R. § 32.11(a) (2006).

VII. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), and pursuant to the Court's own equitable powers, enter:

a. an order finding that Defendants Lerner, Addison Enterprise, and FILP violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Commission Regulations 1.1(b)(1) and (3), and 32.9(a) and (c) thereunder, 17 C.F.R. §§ 1.1(b)(1) and (3), 32.9(a) and (c) (2006); and that Defendants FILP, Addison Enterprise, Lerner, Guthrie, and Dayan violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Commission Regulation 32.11(a), 17 C.F.R. § 32.11(a) (2006);

b. a permanent injunction prohibiting Defendants from engaging in conduct in violation of Section 4c(b) of the Act, 7 U.S.C. §§ 6c(b) (2002) and Commission Regulations 1.1(b)(1) and (3), 32.9(a) and (c), and 32.11(a) thereunder, 17 C.F.R. §§ 1.1(b)(1) and (3), 32.9(a) and (c), and 32.11(a) (2006), and prohibiting Defendants from engaging in any commodity-related activity, including soliciting customers or trading commodity-related accounts on behalf of any customer;

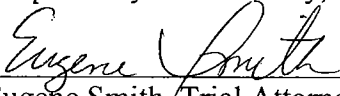
c. an order directing Defendants to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act or of the Commission Regulations, as described herein, and interest thereon from the date of such violations;

d. an order directing Defendants to make full restitution, pursuant to such procedure as the Court may order, to every customer whose funds were received by them as a result of acts and practices which constituted violations of the Act and Commission Regulations, as described herein, and interest thereon from the date of such violations;

e. an order assessing a civil monetary penalty against each Defendant in the amount of not more than the higher of \$130,000 or triple the monetary gain to the Defendant for each violation by the Defendant of the Act and Commission Regulations; and

f. such other and further remedial ancillary relief as the Court may deem appropriate.

Respectfully submitted by,



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